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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,469	03/01/2002	Raymond A. Hui	9793/96 (RDID 01061)	6651
23690	7590	06/17/2005		
Roche Diagnostics Corporation 9115 Hague Road PO Box 50457 Indianapolis, IN 46250-0457				
EXAMINER CEPERLEY, MARY				
ART UNIT		PAPER NUMBER		
1641				

DATE MAILED: 06/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/087,469

Applicant(s)

HUI, RAYMOND A.

Examiner

Mary (Molly) E. Ceperley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42, 45 and 48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42, 45 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1) The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2) Claims 17, 18 and 31 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of copending S.N. 11/076,569, a divisional of S.N. 10/622,254, for the reasons set forth in paragraph **7)** of the Office action of September 27, 2004. Both sets of claims are directed to antibodies which are specific for ecstasy drugs. Applicants' statement regarding a terminal disclaimer is noted (March 17, 2005 Remarks, page 5).

3) Claims 17, 18, 31 and 42 are again provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 16, 26 and 33 of copending Application No. 10/622,524 for the reason set forth in paragraph **8)** of the September 24, 2004 Office action. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. Applicants' statement regarding a terminal disclaimer is noted (March 17, 2005 Remarks, page 5).

4) Although specific claims may be discussed in the rejections below, these rejections are also applicable to all other claims in which the noted problems/language occur.

5) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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6) Claims 1-42, 45 and 48 are rejected under 35 U.S.C. 102(e) as being anticipated by Rouhani et al (US 2003/0207469 A1).

Rouhani et al describe methylenedioxy(meth)amphetamine derivatives wherein a linker-functional group, linker-immunogenic carrier or linker-label (defined by "L¹_n-Z") is attached to the nitrogen atom of the phenethylamine moiety. The linker is inclusive of the definitions of the linker moiety "J-M-" of the instant claims. See Rouhani et al: page 4, paragraph [0040]; page 3, paragraphs [0028] – [0034]. The compounds of Rouhani et al anticipate the (meth)amphetamine haptens, immunogens and tracers of instant claim 1. The antibody and method of producing the antibody from the immunogen (instant claims 17 and 34) are described in paragraphs [0044] and [0045] of the reference. The conventional use of the antibody in an immunoassay (instant claim 42) is described in paragraph [0051] of the reference.

7) Claims 17 and 18 are again rejected under 35 U.S.C. 102(b) as being anticipated by Brynes et al (US 5,101,015).

Brynes et al clearly describe antibodies which are "specific for an ecstasy drug" which anticipate the antibodies of the instant claims. See col. 6, 1. ANTIBODIES of Brynes et al. Applicants have not specifically addressed the rejection of these claims.

8) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary (Molly) E. Ceperley whose telephone number is (571) 272-0813. The examiner can normally be reached from 8 a.m. to 4:30 p.m.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long V. Le, can be reached on (571) 272-0823. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through

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Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 13, 2005


Mary (Molly) E. Ceperley
Primary Examiner
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